

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

LASHIFY, INC.,

Plaintiff,

v.

QINGDAO LASHBEAUTY COSMETIC CO.,
LTD. d/b/a WORLDBEAUTY,

Defendant.

Civil No. 6:22-cv-00776-ADA-DTG

JURY TRIAL DEMANDED

LASHIFY, INC.,

Plaintiff,

v.

QINGDAO HOLLYREN COSMETICS CO.,
LTD. d/b/a HOLLYREN,

Defendant.

Civil No. 6:22-cv-00777-ADA-DTG

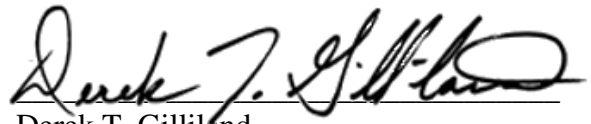
JURY TRIAL DEMANDED

CLAIM CONSTRUCTION ORDER

Before the Court are the Parties' claim construction briefs: Defendants Qingdao Lashbeauty Cosmetic Co. Ltd. d/b/a Worldbeauty ("Worldbeauty") and Qingdao Hollyren Cosmetics Co. Ltd. d/b/a Hollyren ("Hollyren") (collectively, "Defendants") Opening and Reply briefs (ECF Nos. 34 and 42), Plaintiff Lashify, Inc.'s ("Lashify") Response and Sur-Reply briefs (ECF Nos. U.S. 38 and 44), and the Joint Claim Construction Statement (ECF No. 54). The Court Patent Nos. 11,219,260 ("the '260 patent"), 11,253,020 ("the '020 patent"), 11,330,855 ("the '855 patent"), 11,330,856 ("the '856 patent"), and 11,234,472 ("the '472 patent").

The Court considered the Parties' briefs and provided preliminary constructions in advance of the *Markman* hearing. A *Markman* hearing was scheduled for April 14, 2023 but was cancelled after the parties determined that a hearing was not necessary. The Court issues this Order to memorialize the Court's final claim construction rulings for the parties, and to inform the parties that the Court is will issue a more-detailed Memorandum explaining its analysis in due course. The deadline to file any objections to the undersigned's claim construction rulings (pursuant to Federal Rules of Civil Procedure 59 and 72) do not need to be filed until 14 days after that more fulsome Order is entered upon the docket.

SIGNED this 14th day of April, 2023.


Derek T. Gilliland
United States Magistrate Judge

THE COURT'S FINAL CLAIM CONSTRUCTIONS

Claim Term or Phrase	Lashify's Proposed Construction	Defendants' Proposed Construction	Court's Final Construction
lash extension(s) '260 patent (claims 1-4, 6-12, 14-22, 24-30, 32-36) '472 patent (claims 1, 14) '020 patent (claims 1-11, 13-19) '855 patent (claims 1-5, 8-13, 19) '856 patent (claims 1-7, 9-11, 15-20) Proposed by defendants.	Plain and ordinary meaning.	"multiple, disconnected segments of artificial hairs pieces, where each segment is less than the width of an individual's eyelid"	Plain and ordinary meaning.
cluster(s) '260 patent (claims 1, 7, 9-11, 15, 19, 25, 27-29, 33) '472 patent (claims 1-5, 7-12, 15-18) '020 patent (claims 1-2, 4, 8-9, 14-17) '855 patent (claims 1, 13, 16, 21-23) '856 patent (claims 1-3, 5, 10-11) Proposed by defendants.	Plain and ordinary meaning.	Indefinite, lacking written description	Plain and ordinary meaning. Not indefinite.

<p>base '260 patent (claims 1, 6, 17-19, 24, 35-36) '472 patent (claims 1, 5, 7-8, 11, 14, 17-18) '020 patent (claims 1-3, 10, 15-16, 18-19) '855 patent (claims 1, 3, 11-12, 16, 20, 22)</p> <p>Proposed by defendants.</p>	<p>Plain and ordinary meaning.</p>	<p>Indefinite, lacking written description</p> <p>The “base” must be structurally distinct from “clusters” and “hairs”¹</p>	<p>Plain and ordinary meaning. Not indefinite.</p>
<p>“attach(ed) . . . by . . . application of heat” '260 patent (claim 1, 19)</p> <p>“formed by . . . application of heat” '260 patent (claim 6, 24) '020 patent (claim 3) '856 patent (claim 4) '855 patent (claim 1)</p> <p>“connected . . . by . . . application of heat” '260 patent (claim 7, 25)</p>	<p>Plain and ordinary meaning.</p>	<p>“using heat in order to create . . . attachment”</p> <p>“using heat in order to create . . . formation”</p> <p>“using heat in order to create . . . connection”</p> <p>“using heat in order to create . . . attachment”</p>	<p>Plain and ordinary meaning.</p>

¹ Lashify objected to defendants’ purported construction of this term, which was not identified in defendants’ claim construction disclosures under the Court’s Scheduling Order or in the claim construction briefing. *E.g.*, No. 6:22-cv-00776, Dkt. 34 (defendants’ Opening Claim Construction Brief identifying defendants’ proposed claim construction as “indefinite, lacking written description”). The Court agrees that this is an untimely disclosure of the term, but even considering the proposal, finds it unpersuasive.

<p>'020 patent (claim 1, 2, 4)</p> <p>'856 patent (claims 1, 5)</p> <p>'855 patent (claims 1, 13, 21)</p> <p>“applying . . . heat to . . . attach”</p> <p>'472 patent (claim 1)</p> <p>“connect[ing]/[ed] . . . by applying . . . heat”</p> <p>'472 patent (claim 4, 17)</p> <p>“applying . . . heat to seal”</p> <p>'472 patent (claim 7)</p> <p>“applying . . . heat to form”</p> <p>'472 patent (claim 11)</p> <p>Proposed by defendants.</p>		<p>“using heat in order to create . . . connection”</p> <p>“using heat in order to create . . . seal”</p> <p>“using heat in order to create . . . formation”</p>	
<p>the base [is] designed to at least attach [the artificial lash extension] to an underside of natural lashes; designed for an application under the natural lashes; designed to attach adjacent to one another at an underside of natural lashes; designed to attach to [an/the]</p>	<p>Plain and ordinary meaning.</p>	<p>Indefinite, lacking written description, lacking enablement</p>	<p>Plain and ordinary meaning. Not indefinite.</p>

underside of [the] natural lashes '260 patent (claims 1, 6, 17- 19, 24, 35-36) '472 patent (claims 1, 5, 7-8, 11, 14, 17-18) '020 patent (claims 1-3, 10, 15-16, 18-19) '856 patent (claims 18-20) Proposed by defendants.			
a thickness of the base '260 patent (claims 17-18, 35-36) '020 patent (claims 18-19) the base . . . has a thickness '855 patent (claims 3, 20) Proposed by defendants.	Plain and ordinary meaning.	To the extent the Court finds that “base” meets the 112 requirements, “a thickness of the base” refers to “the height along the entire base”	Plain and ordinary meaning.